

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915

No. 281

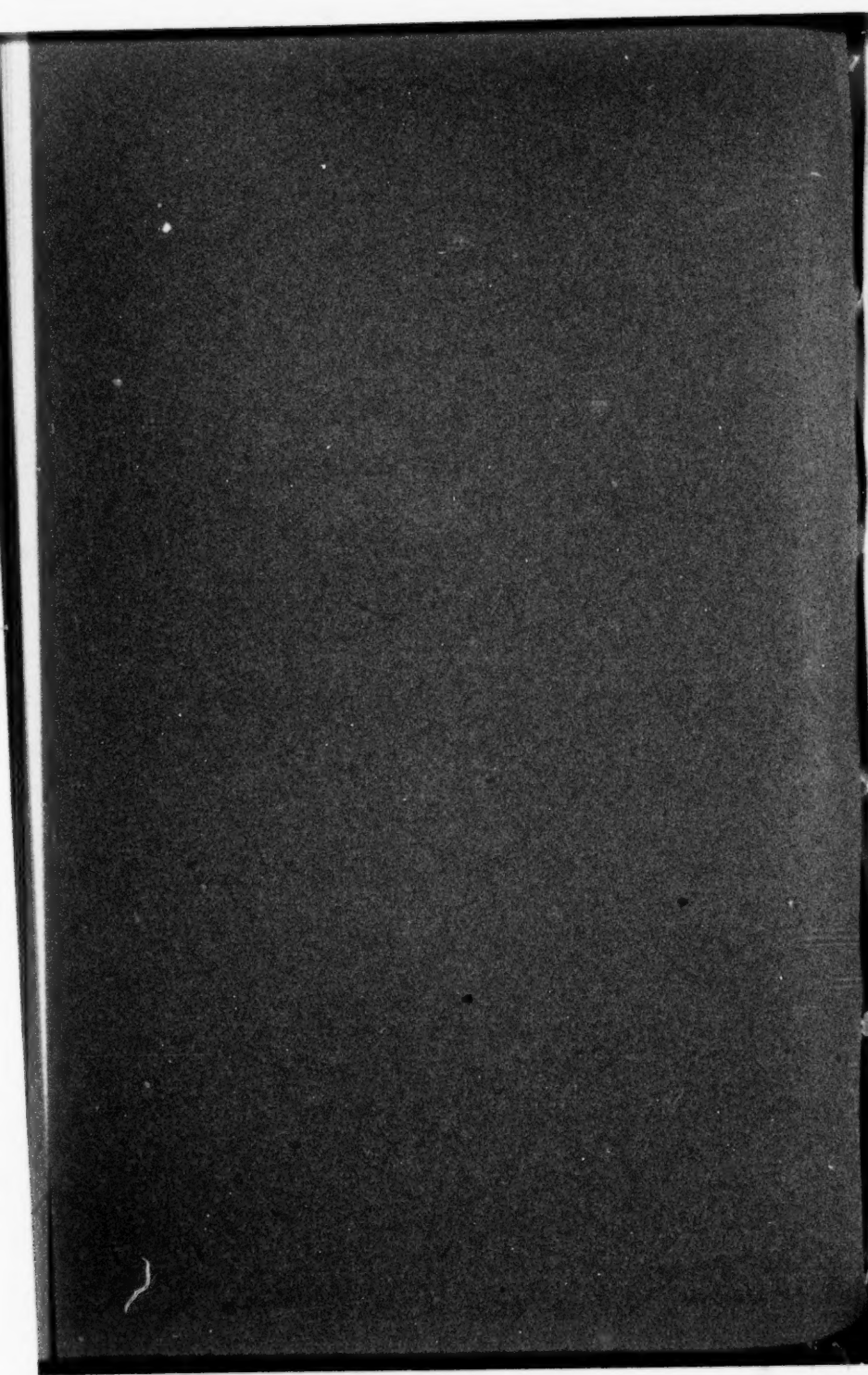
CLYDE STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.
WILLIAM ALFRED WALKER.

ON WRIT TO THE SUPREME COURT, APPELLATE DIVISION, THIRD
DEPARTMENT, OF THE STATE OF NEW YORK.

FILED NOVEMBER 9, 1915.

(34,934)



(24,984)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 701.

CLYDE STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM ALFRED WALKER.

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION, THIRD
DEPARTMENT, OF THE STATE OF NEW YORK.

INDEX.

	Original. Print	
Caption	<i>a</i>	1
Record on appeal to Court of Appeals.....	1	1
Statement under rule 41.....	1	1
Notice of appeal to appellate division.....	2	1
Form C 1—Employee's first notice of injury.....	3	2
Form C 2—Employer's first report of injury.....	4	3
Form C 3—Employee's claim for compensation.....	8	5
Form C 39—Notice to employer of employee's claim.....	11	7
Decision of the commission.....	12	8
Findings of fact.....	13	8
Objections to award.....	16	10
Stipulation	17	11
Order of affirmance.....	18	11
Order of commission affirming award.....	19	12
Notice of appeal to Court of Appeals.....	21	12
Stipulation waiving certification.....	23	13
Affidavit of no opinion.....	24	13

	Original. Print	
Remittitur from Court of Appeals.....	25	14
Certified opinion of Court of Appeals.....	29	15
Judgment on remittitur from Court of Appeals.....	32	18
Application for writ of error.....	35	19
Assignment of errors.....	38	20
Prayer for reversal.....	42	22
Writ of error.....	44	23
Citation and service.....	47	24
Bond on writ of error.....	49	24
Clerk's certificate.....	51	27

a Court of Appeals, State of New York.

In the Matter of the Claim of WILLIAM ALFRED WALKER for Workmen's Compensation; Clyde Steamship Company, Employer and Self-insurer, Appellant.

Appeal from Affirmance of an Award by the State Workmen's Compensation Commission.

Burlingham, Montgomery & Beecher, Attorneys for Appellant, 27 William Street, New York City.

Egbert E. Woodbury, Attorney General for State of New York.
Jeremiah F. Connor, Attorney for State Workmen's Compensation Commission.

1 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of WILLIAM ALFRED WALKER for Workmen's Compensation; Clyde Steamship Company, Employer and Self-insurer, Appellant.

Statement under Rule 41.

The claimant, William Alfred Walker, was injured on July 1, 1914. On July 14, 1914, he gave notice of his injury to the Commission. On August 5th notice of the employee's claim was given to the employer, August 7th being the date set for hearing. The name of the employer and self-insurer is Clyde Steamship Company.

2 *Notice of Appeal.*

Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of WILLIAM ALFRED WALKER for Compensation under the Workmen's Compensation Law; Clyde Steamship Company, Employer and Self-insurer, Appellant.

SIRS: Please take notice that Clyde Steamship Company hereby appeals to the Appellate Division of the Supreme Court, Third Department, from the award of the Workmen's Compensation Commis-

sion made herein and entered in the office of said Commission on the 3rd day of September, 1914.

Dated, New York, September 22, 1914.

Yours, etc.,

BURLINGHAM, MONTGOMERY & BEECHER,

Attorneys for Clyde Steamship Company

Office and Post Office Address, 27 William Street, Borough of Manhattan, New York City.

To:

Joseph H. Hollands, Esq., Clerk, Supreme Court, Appellate Division, Third Department.

James A. Parsons, Esq., Attorney General.

3 Workmen's Compensation Commission.

Jeremiah Connor, Esq., Counsel, Workmen's Compensation Commission, and

William Walker, Claimant.

Form C 1—Employee's First Notice of Injury.

To preserve your rights under the law you must mail this notice properly filled out and signed by you, or by someone for you, by registered letter to the State Workmen's Compensation Commission at 1 Madison Avenue, New York City, within ten days after your injury.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 1 Madison Avenue.

Employee's First Notice of Injury.

Bureau of Claims.

Claim No. 1235.

Case of ———.

Full name of injured employee: William Alfred Walker. Address: 151 W. 133rd St.

Name of employer: Clyde Steamship Company. Address: Pier 36 North River.

Address where accident happened: Pier 37 N. R. Date of accident: July 1st, 1914, at 8 A. M.

Cause of accident: As I was about to turn over lumber drawer started and caught my hand.

Nature and extent of injury: Laceration on left hand (joint of injured 1st finger).

4 Are you likely to be disabled more than two weeks? (Careful answer must be given:) Yes.

Have you notified your employer? Yes. When July 14th.

How? (By delivery of notice or by registered letter:) By delivering. What was your daily wage? 3.00.

Where are you now? At home.

Did you request your employer to furnish medical service? No. Has he done so? They have volunteered to do so.

Name of attending physician: Harlem Hosp.—Out Patient. Address: Lenox Ave. & 137th St.

Signed, this 14th day of July, 1914 (Sign here) William Alfred Walker (Full name) at New York, N. Y. Address to which mail should be sent: 151 W. 133rd St.

Form C 2—Employer's First Report of Injury.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 1 Madison Avenue.

Employer's First Report of Injury.

Bureau of Claims.

Claim No. 1235.

Case of ———.

Instructions.—The employer must fill out this form and return same to the Commission, at its New York Office, within ten days after every accident which causes any loss of work or requires medical attendance. (See penalty, Sec. 111 of the law printed on the back hereof.) In filling out this form use pen or typewriter. This notice is given subject to annexed protest which is made a part hereof.

Employer, Place and Time.

Employer's name: Clyde Steamship Company, a Maine Corporation.

Office Address (Street and number, city or village and county): Pier 36 N. R. New York City, N. Y.

Business, goods produced, work done or kind of trade or transportation: Steamship carrier engaged in interstate commerce only.

Location of plant or place of work where accident occurred (Street and Number): Lower after between decks of S/S "Cherokee" Pier 37 N. R. New York.

In what City or village? New York. County? New York.

Date of accident: 1st day of July, 1914; hour of day, 8 A. M.

Did accident happen on the premises? Yes. At the plant? Yes.
 Away from the plant of employer? No. If away from the plant,
 state where —.

Was employee injured in course of employment? Yes.

The Injured Employee.

Give full name of injured employee: William A. Walker.

Address (Street and number, city or village and county): 151
 West 133rd St. New York City, N. Y.

Sex: Male. Age: 28. Speak English: Yes. If not, what lan-
 guage?

Occupation when injured? Longshoreman.

Was injured employee doing his regular work? Yes. If not, what
 work?

6 How long was injured person in your employment? 3
 years.

Piece or time worker: Time. Wages or average earnings per day?
 30¢ per hour.

The Injury.

Describe in full how the accident occurred: Walker was hooking
 the rope of the derrick on to a load of lumber in the after lower be-
 tween decks of the S/S Cherokee when his left hand became jammed
 against the lumber.

State nature and extent of injury (If amputation was necessary,
 state what part amputated): Knuckles cut slightly.

Medical Attendance.

Was medical attendance provided by you? No. He refused.

How soon after accident?

Name and address of physician.

To what hospital was employee sent?

Address of hospital: Went home.

If not sent to hospital, where is he?

Are you still providing medical attendance? No.

If injured employee has already returned to work, give date of
 return: —. If so, is he fully recovered and earning full wages?

How many working days did he lose on account of accident?

If not returned to work, probable length of disability (Give your
 best estimate).

Is injured employee married or single? Married.

Insurance.

Is insurance carried in the State Fund? If not, in what company
 or association? Have been granted permission to carry our own
 insurance.

7 Signed, this 10 day of July, 1914, at New York, N. Y.
 Firm name: Clyde Steamship Company.

Signed F. J. Kiernan. J. B. Taable, Official title, Asst. Time-keeper.

The Company making the annexed report, does so under protest, upon the grounds that the Workmen's Compensation Law has no application to the business or employees of this Company and that under the terms of said law it is not required to report accidents to the Commission; that the Company's business consists solely of interstate and foreign commerce, to which said law has no application and that said law if applied to the business of this Company or to its employees is unconstitutional. This report is accordingly made under protest, for the sole purpose of avoiding the penalties provided in said law for failure to make such report, and without prejudice to the right of this Company to contest the application of said law to this Company or to any of its employees or to the whole or any part of its business and to contest the constitutionality of any and all provisions of said law.

SECTION 111. Record and Report of Injuries by Employers.—Every employer should keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident, resulting in personal injury, a report thereof shall be made in writing by the employer to the Commission, upon blanks to be procured from the Commission for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the Commission.

8 An employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars.

Notice.—If the injured employee is not fully recovered before this notice is sent by you, the Commission will send you form No. C-11 for 2nd notice; report thereon at proper time. (See instructions thereon.)

Form C 3—Employee's Claim for Compensation.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 1 Madison Avenue.

Employer's Claim for Compensation.

Bureau of Claims.

Claim No. 1235.

Case of ———.

Instructions.—To facilitate prompt payment of compensation the injured employee, or someone for him, should write carefully (using

ink or indelible pencil) answers to the following questions, and mail the same directly to the Commission within four weeks after date of injury.

I hereby make claim for compensation for an injury resulting in my disability, due to an accident upon the day of July 1, 1914, arising out of and in the course of my employment by (Name of employer) The Clyde Steamship Company of (City or town) — (County) — (State)

9 My claim is:

If totally disabled: From what date? July 1, 1914. Are you now disabled? If not, on what date were you able to return to work? July 22, 1914. If still disabled, how long do you estimate disability will continue?

If Mutilated: Thumb? First finger? Second finger? 2nd Third finger? Fourth finger? Phalange of thumb or finger? If so, which. Great toe? Other toe? Phalange of toe? Of which Hand Left Arm Foot Leg? Eye? Both eyes? Did you suffer loss of member, or loss of use of the member? No.

If loss of use, is such loss temporary or permanent? Temporary.

If partially disabled: From what date? July 1, 1914? Are you still so disabled? If not, on what date did disability cease? July 22, 1914. If still partially disabled, how long do you estimate disability will continue? By how much have your daily earnings been reduced by this injury? 3 dollars a day, and for such other and further relief as I may be entitled to in consequence of such injury.

Place of Accident.

In proof of such claim I make the following statements:

Location of plant where accident occurred (Street and number): While working with lumber caught hand between wood & part of ship.

In what city or village: N. Y. C. County? —.

If away from employer's premises or plant, state where accident happened: At work.

The Injured Employee.

10 Full name of injured employee? William Alfred Walker.
Address? (Street and number, city or village and county): 151 West 133 Street, N. Y. C.

Sex? Age? 28. Do you speak English? Yes.

If not, what language. Are you married or single? Married.

Where were you born? Virginia.

State occupation when injured: Longshoreman.

How long have you worked at this occupation? 3 years.

How long have you worked for present employer? 3 years.

Were you doing your regular work when injured? Yes.

Piece or time worker? Time work. Wages, or average earnings, per day? \$3 day.

Describe how accident occurred: While working with lumber caught hand between wood and part of ship.

Were safeguards provided? If so, was accident caused by removal of any safeguard?

Was your eyesight or hearing defective? No.

Medical Attendance.

Did you request your employer to provide medical attendance?

Yes.

Has he done so? No. What physician attended you? Harlem Hospital.

Address of physician: 1884 7th Ave.

Were you sent to hospital? No. If so, name and address of hospital?

Where are you now? At home.

If married, give full name, address and age of wife or husband: William Alfred Walker; Mrs. Carrie Walker, 151 W. 133 St., N. Y. Wife age 25—Husband 28.

11 Form C 39—Notice to Employer of Employee's Claim.

State Workmen's Compensation Commission.

Principal Office, The Capital, Albany, N. Y.

New York Office: 1 Madison Avenue.

Notice to Employer of Employee's Claim.

Bureau of Claims.

Claim No. 1235.

Case of William Alfred Walker.

August 5, 1914.

To Clyde Steamship Company (Employer), Address Pier 36, N. R., New York City:

This is to notify you that the State Workmen's Compensation Commission has received at its New York Office, 1 Madison Avenue, New York City, from William Alfred Walker, of 151 W. 133rd St., New York City, — County, a claim for compensation for an injury due to an accident upon the 1st day of July, 1914, arising out of and in the course of his employment by you, which claim is as follows:

Copy of Employee's Claim.

My claim is:

If Totally Disabled: From what date? July 1, 1914. Are you now disabled? If not, on what date were you able to return to

work? July 22, 1914. If still disabled, how long do you estimate disability will continue?

If Mutilated: Thumb? First Finger? Second finger? 12 2nd. Third Finger? Fourth finger? Phalange of thumb or finger? If so, which? Great toe? Other toe? Phalange of toe? Of which? Hand? Left Arm? Foot? Leg? Eye-Both eyes? Did you suffer loss of the member or loss of use of the member? If loss of use, is such loss temporary or permanent? Temporary.

If Partially Disabled: From what date? July 1, 1914. Are you still so disabled? If no, on what date did disability cease? July 22, 1914. If still partially disabled, how long do you estimate disability will continue? By how much have your daily earnings been reduced by this injury? \$3 per day and for such other and further relief as I may be entitled to in consequence of such injury.

This is sent to apprise you of the claim made by such employee which will come up for consideration at the session of the Commission at its New York office on 7th day of August, 1914. If no request for hearing has been received or adjournment granted by the Commission, award will be made on that day upon the evidence then in the hands of the Commission.

STATE WORKMEN'S COMPENSATION COMMISSION.

Decision of the Commission.

Sept. 3rd, 1914.

Claim # 1235—William A. Walker Against Clyde Steamship Company.

The Clyde Steamship Company is a Maine corporation engaged in interstate commerce. Walker resides in New York City, and was employed by the company as a longshoreman to assist in unloading the ship Cherokee, at Pier 37, North River, New York City.

13 The accident occurred while he was working upon the steamship.

Held, that Walker was entitled to compensation under Section 2, group 10.

Findings of Fact.

State Workmen's Compensation Commission.

In the Matter of the Claim of WILLIAM ALFRED WALKER for Compensation, CLYDE STEAMSHIP COMPANY, Employer and Self-Insurer.

This claim came on for hearing before the State Workmen's Compensation Commission at the office of the Commission, 1 Madi-

son Avenue, New York City, on August 7, 1914, and was continued until September 3, 1914, when an award was made. All the members of the Commission were present.

Appearances:

Jeremiah F. Connor, Esq., counsel for State Workmen's Compensation Commission.

Burlingham, Montgomery & Beecher (Norman B. Beecher, Esq., of counsel,) attorneys for Clyde Steamship Company.

All the evidence submitted before the Commission having been heard the Commission makes its findings of fact and its award as follows:

14 Findings of Fact.

1. William Alfred Walker, a claimant, is a longshoreman, residing at 151 West 133rd Street, New York City. Prior to July 1, 1914, he was employed in the City of New York by the Clyde Steamship Company for longshore work. He was injured on July 1, 1914, while in the employ of the Clyde Steamship Company as a longshoreman.

2. The Clyde Steamship Company is a corporation organized and existing under the Laws of Maine, where it has its principal office. It also has an office at Pier 36 North River.

3. During the discharge of the Cherokee and at the time of the accident, the claimant was on board the steamship Cherokee, owned and operated by the Clyde Steamship Company. During the year prior to the accident, Walker had been employed from time to time by the Clyde Steamship Company and could have been assigned to work upon the pier. The Cherokee was, at the time of the accident, moored to and alongside Pier 37, North River, New York City, lying in navigable waters of the Hudson River. Said pier is leased by Clyde Steamship Company from the City of New York.

4. While claimant was hooking the rope of a derrick into a load of lumber in the between decks of said vessel for the purpose of unloading it from that vessel, his hand was jammed against the lumber, resulting in laceration of the second finger of the left hand. Claimant was disabled by reason of the injury from July 1, 1914, to July 22, 1914, returning to work upon the latter date.

5. The business of the Clyde Steamship Company in this state consists solely of carrying passengers and merchandise to New York from other states and carrying passengers and merchandise from New York to other states. All cargo on board the Cherokee, including the lumber aforesaid, had been taken on board in the State of North Carolina and carried by water to New York and was there unloaded from the steamship Cherokee. The claimant was engaged solely in handling said lumber.

6. The injury was an accidental injury and arose out of and in the course of the employment of claimant by the Clyde Steamship

Company. The injury did not result solely from the intoxication of the injured employee while on duty, and was not occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or another.

7. The average weekly wage of claimant was \$17.30.

Ruling of Law and Award.

Claimant was engaged in longshore work within the meaning of Group 10 of Section 2 of the Workmen's Compensation Law and is entitled to compensation.

Award is hereby made to William Alfred Walker of compensation at the rate of \$11.54 per week based upon an average weekly wage of \$17.30, for the period from July 15, 1914, to July 22, 1914, making a total award of \$11.54.

Dated, September 3, 1914.

STATE WORKMEN'S COMPENSATION COMMISSION.

ROBERT E. DOWLING, *Chairman*;

JOHN MITCHELL,

THOMAS DARLINGTON,

H. T. MASHER,

J. MAYHEW WAINWRIGHT,

Commissioners.

Objections to Award.

At the hearing objection was made to the making of an award on the ground that the Act does not apply because the injured man was engaged in interstate commerce on board a vessel of a foreign corporation of the State of Maine, which was engaged solely in interstate commerce; the injury was one with respect to which Congress may establish and has established a rule of liability, and under the language of Section 114 of the Act has no application; on the ground that the Act includes only those engaged in the operation of vessels other than those of other states and countries in foreign and interstate commerce, while this longshore work of unloading the vessel was part of the operation of a vessel of another state engaged in interstate commerce and hence does not come within the provision of the Act; further, that the Act is unconstitutional, as it constitutes a regulation of commerce among the several states in violation of Article I, Section 8, of the Constitution of the United States; in that it takes property without due process of law in violation of the Fourteenth Amendment of the Constitution; in that it denies the Clyde Steamship Company the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution, because the Act does not afford an exclusive remedy, but leaves the employer subject to suit by this claimant in admiralty; also, that the Act is unconstitutional in that it violates Article III, Section 2 of the Constitution, conferring admiralty jurisdiction on the Courts of the United States.

17

Stipulation.

It is agreed that the medical evidence and resolution making award be omitted from the record.

It is agreed that the above papers and records are true copies of papers and records on file in the office of the State Workmen's Compensation Commission, and that the same need not be certified; and it is agreed that the foregoing appeal be heard upon these papers.

Dated, New York, December 28, 1914.

EGBERT E. WOODBURY,

Attorney General for State of New York.

BURLINGHAM, MONTGOMERY &

BEECHER,

Attorneys for Clyde Steamship Company.

JEREMIAH F. CONNOR,

Attorney for State Workman's Compensation Commission.

18

Order of Affirmance.

At a Term of the Appellate Division of the Supreme Court in and for the Third Judicial Department, Held at the Appellate Division Court Rooms, in the City of Albany, N. Y., Commencing on the 2nd Day of March, 1915.

Present:

Hon. Walter Lloyd Smith, Presiding Justice; Hon. John M. Kellogg, Hon. George F. Lyon, Hon. Wesley O. Howard, Hon. John Woodward, Associate Justices.

In the Matter of the Claim of WILLIAM ALFRED WALKER, Respondent,
against
CLYDE STEAMSHIP COMPANY, Employer and Self-insurer, Appellant.

The above named Clyde Steamship Company having appealed from the award or decision of the Workmen's Compensation Commission entered in the office of said Commission on the 3rd day of September, 1914, whereby compensation was awarded to the above named William Alfred Walker in the total sum of \$11.54; and said appeal having come on to be heard in this court and having been argued by Norman B. Beecher, Esq., for the appellant and E.

Clarence Aiken, Esq., for the Workmen's Compensation Commission, and due deliberation having been had thereon,

Now, on motion of Egbert E. Woodbury, Attorney General, attorney for the Workmen's Compensation Commission, it is,

Ordered, that the award or decision of the Workmen's Compensation Commission appealed from be and the same hereby is in all respects affirmed.

JOSEPH H. HOLLANDS, *Clerk.*

Order of Commission Affirming Award.

Before the State Workmen's Compensation Commission.

In the Matter of the Claim of WILLIAM ALFRED WALKER, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLYDE STEAMSHIP COMPANY, Employer and Self-insurer.

Whereas, the Clyde Steamship Company having appealed to the Appellate Division of the Supreme Court, Third Department, from the award and decision of the Workmen's Compensation Commission made September 3, 1914, allowing compensation to the above
20 named William Alfred Walker at the rate of \$11.54 per week based upon an average weekly wage of \$17.30 for the period from July 15, 1914, to July 22, 1914, making a total award of \$11.54; and said appeal having been heard by said Appellate Division of the Supreme Court, and the said Appellate Division of the Supreme Court having, at a term commencing March 2nd, 1915, *having* duly affirmed the award and decision of the Workmen's Compensation Commission, by an order duly filed with the Clerk of the Appellate Division on the 22nd day of March, 1915; and the papers on appeal herein, together with a certified copy of said order of the Appellate Division, having been remitted to the Workmen's Compensation Commission and having been duly filed in the office of the Commission.

Ordered, that the order of the Appellate Division be, and the same hereby is made the order of the Workmen's Compensation Commission, and further ordered that the award of compensation made herein, September 3, 1914, be and the same hereby is affirmed.

Dated, March 23, 1915.

F. A. SPENCER,

Secretary.

21 *Notice of Appeal to Court of Appeals.*

Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of WILLIAM ALFRED WALKER for Workmen's Compensation; Clyde Steamship Company, Employer and Self-Insurer, Appellant.

SIRS: Please take notice that the Clyde Steamship Company hereby appeals to the Court of Appeals from the order of the State Workmen's Compensation Commission entered in the office of said Commission on March 23, 1915, affirming an award made herein
22 on September 3, 1914, and from the order of the Appellate Division of the Supreme Court, Third Department, affirming said award and entered in the office of said Appellate Division on

March 22, 1915, and from said award made herein on September 3, 1914.

Dated, New York, April 2, 1915.

Yours, etc.,

BURLINGHAM, MONTGOMERY & BEECHER,
Attorneys for Clyde Steamship Company.

Office and Post Office Address, 27 William Street, Borough of Manhattan, New York City.

To:

Clerk of the Court of Appeals.

Clerk of Appellate Division, Third Department.

Egbert E. Woodbury, Esq., Attorney General.

State Workmen's Compensation Commission.

Jeremiah F. Conner, Esq., Counsel State Workmen's Compensation Commission.

William Alfred Walker, Claimant.

23

Stipulation Waiving Certification.

It is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of appeal to the Court of Appeals, the order of affirmance of the Appellate Division, Third Department, the order of affirmance of the State Workmen's Compensation Commission entered upon said order and all the papers upon which said Appellate Division acted in making its order affirming the award of the State Workmen's Compensation Commission herein, as the same are now on file in the office of the Secretary of the State Workmen's Compensation Commission.

Certification thereof is hereby waived.

Dated, New York, April 20, 1915.

BURLINGHAM, MONTGOMERY &
BEECHER,

Attorneys for Appellant.

EGBURT E. WOODBURY,

Attorney General.

JEREMIAH F. CONNOR,

Counsel State Workmen's Compensation Commission.

24

Affidavit of No Opinion.

Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of WILLIAM ALFRED WALKER for Workmen's Compensation; Clyde Steamship Company, Employer and Self-insurer, Appellant.

STATE OF NEW YORK,

County of New York, ss:

Ray Rood Allen, being duly sworn, deposes and says: That he is an attorney in the office of Burlingham, Montgomery & Beecher,

attorneys for the appellant, and is familiar with this appeal. No opinion was handed down by the Appellate Division of the Supreme Court, Third Department, upon the decision of this appeal.

RAY ROOD ALLEN.

15
25

Sworn to before me this 19 day of April, 1915.

ROSCOE H. HUPPER,

Notary Public, New York County, 1621.

25

Form 6.

Court of Appeals.

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at the Capitol, in the City of Albany, on the 13th day of July in the year of our Lord one thousand nine hundred and fifteen, before the Judges of said Court.

Witness, the Hon. Willard Bartlett, Chief Judge, presiding; R. M. Barber, Clerk.

Remittitur July 14th, 1915.

26 In the Matter of the Claim of WILLIAM ALFRED WALKER,
Respondent, &c.,
ag't

CLYDE STEAMSHIP COMPANY, Employer, &c., Appellant.

Be it Remembered, That on the 21st day of April in the year of our Lord one thousand nine hundred and fifteen Clyde Steamship Company the appellant in this proceeding, came here into the Court of Appeals, by Burlingham, Montgomery & Beecher, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the Order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And William Alfred Walker the respondent in said Proceeding, afterwards appeared in said Court of Appeals by Egbert E. Woodbury, Attorney-General.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

27 Whereupon, the said Court of Appeals having heard this cause argued by Mr. Norman B. Beecher of counsel for the appellant, and by Mr. E. C. Aiken, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the Order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law.

28 Therefore, it is considered that the said Order be affirmed with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid, as the judgment of the Court of Appeals aforesaid, by them given in the premises are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division before the Justices thereof, etc.

R. M. BARBER,
*Clerk of the Court of Appeals of the
State of New York.*

Court of Appeals, Clerk's Office.

ALBANY, July 14th, 1915.

I hereby Certify that the preceding record contains a correct transcript of the proceedings in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.]

R. M. BARBER, *Clerk.*

29 STATE OF NEW YORK,

Court of Appeals, State Reporter's Office, ss:

I, J. Newton Fiero, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Matter of Claim of Walker for Workmen's Compensation, decided by the Court of Appeals on the 13th day of July, 1915, with the Official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 25th day of October, 1915.

[Seal Court of Appeals, State of New York.]

J. NEWTON FIERO,
*As Reporter of the Court of Appeals of
the State of New York.*

Attest:

[L. s.] R. M. BARBER,
Clerk of the Court of Appeals.

STATE OF NEW YORK,

Court of Appeals:

I, Willard Bartlett, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that R. M. Barber is the clerk of said court, having custody of the seal of said court and of

the decisions, minutes and records thereof, and that J. Newton Fiero is the official reporter of said court, having custody of the official opinions, written and handed down by said court and its members thereof, and of the official publication and reports thereof, and, I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Matter of Claim of Walker for Workmen's Compensation, decided by the said Court of Appeals on the 13th day of July, 1915, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of R. M. Barber as clerk of said court, appended thereto is the true and genuine signature of said R. M. Barber, and the signature of J. Newton Fiero as reporter of said court, appended thereto is the true and genuine signature of said J. Newton Fiero.

In witness whereof, I have hereunto subscribed my official signature, at the Chambers of said court, at the Capitol of said State, in the City of Albany and State of New York, on the 25th day of October in the year of one thousand, nine hundred and fifteen.

WILLARD BARTLETT,

*As Chief Judge of the Court of Appeals
of the State of New York.*

30 In the Matter of the Claim of WILLIAM ALFRED WALKER
Workmen's Compensation

vs.

CLYDE STEAMSHIP COMPANY, Employer and Self-insurer, Appellant

(Decided July 13, 1915.)

Appeal from an Order of the Appellate Division Affirming an Award of the State Workmen's Compensation Commission.

Norman B. Beecher, for appellant.

Egburt E. Woodbury, Attorney-General (E. C. Aiken of counsel for respondent.

MILLER, J.:

This case involves a point not considered in Matter of Jensen decided herewith. The claimant was injured on a steamship lying alongside a pier in the Hudson river, and the case was, therefore, one of admiralty and maritime jurisdiction. It is urged that the Workmen's Compensation Act was not intended to apply to such a case, and that if it was it is unconstitutional for denying the equal protection of the laws.

Article 3, section 2 of the Constitution of the United States provides: "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction."

The Judicial Code of the United States of March 3d, 1911 (C. 2

amending 36 Stat. 1087) provides: "Section 24. The district courts shall have original jurisdiction as follows: * * * Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it." "Section 256. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several states; * * * Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it."

Whilst Congress has conferred admiralty jurisdiction upon the District Courts, that jurisdiction is derived from the Constitution of the United States and is governed by the rules of the maritime law. Congress has not established "a rule of liability or method of compensation" within the meaning of section 114 of the Workmen's Compensation Act set forth in the opinion in the Jensen case. The act, therefore, applies unless the admiralty jurisdiction is exclusive. But the sections of the Judicial Code above quoted like the provisions of the Judiciary Act from which it was compiled saves to suitors common-law remedies. The jurisdiction peculiar to admiralty, which cannot be exercised by state courts, is the jurisdiction to enforce maritime liens by proceedings in rem. A suitor must pursue that

31 remedy in the District Court of the United States, but he may if he choose resort to his common-law remedy by action against the master or owner of the vessel in any court, state or federal, having jurisdiction. (The *Moses Taylor*, 4 Wall. 411; The *Hine v. Trevor*, Id. 555; The *Belfast*, 7 id. 624; *Steamboat Co. v. Chase*, 16 id. 522; The *Lottawanna*, 21 id. 558; The *Glide*, 167 U. S. 606.) The remedy provided by the Workmen's Compensation Act is a substitute for the common-law remedy. It is in no sense a proceeding in rem to enforce a maritime lien and may, therefore, exist concurrently with the remedy in admiralty. The state cannot interfere with the admiralty jurisdiction (The *Lottawanna* supra; *Workman v. New York City*, 179 U. S. 553), and if the act be valid, an injured employee may in certain cases have a choice of remedies, one under the act and another in admiralty precisely as before he could choose between his common-law remedy and the right to proceed in admiralty.

But it is argued that the act purports to grant exemption from further liability to those who comply with it, and that as such exemption is not effectual in the case of employers whose property may be proceeded against in admiralty, it is as to them a denial of the equal protection of the laws. The exemption, however, is from suits at common law, of which all employers complying with the act equally have the benefit. If another remedy remain, it results from the nature of the case, and not from any attempt at discrimination on the part of the legislature. All in the same case are treated alike. Employers in the situation of the appellant are subjected to two remedies now, precisely as they were before the passage of

the act. A new remedy has been substituted for the common-law remedy, from which the employer is granted exemption.

The case of *Cunningham v. Northwestern Improvement Co.* (44 Mont. 180), relied on by the appellant is not in point. The statute considered in that case required the employers to make the prescribed payments into the state fund but left them liable to a suit at common law. The legislature in this case granted as far as it had the power exemption from further liability upon compliance with the act, thus treating all alike. If in certain cases a remedy in admiralty still exists, that results from the dual nature of our government—from the existence of two jurisdictions within the same territorial limits—and is a part of the price which persons thus affected have to pay for the privilege of enjoying the advantages of that form of government.

The order should be affirmed, with costs.

Willard Bartlett, Ch. J., Werner, Collin, Cuddeback, Cardozo and Seabury, JJ., concur.

Order affirmed.

32 At a Term of the Appellate Division of the Supreme Court, in and for the Third Judicial Department, held at the City Hall, in the City of Saratoga Springs, N. Y., on the 14th day of September, 1915.

Present:

Hon. Walter Lloyd Smith, Presiding Justice.

Hon. John M. Kellogg,

Hon. George F. Lyon,

Hon. Wesley O. Howard,

Hon. John Woodward,

Associate Justices.

In the Matter of the Claim of WILLIAM ALFRED WALKER, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

CLYDE STEAMSHIP COMPANY, Employer and Self-insurer, Appellant.

The above named Clyde Steamship Company having appealed from the order of the Appellate Division of the Supreme Court, in and for the Third Judicial Department, made at a term commencing on the 2nd day of March, 1915, which affirmed an award of the Workmen's Compensation Commission entered in the office of said Commission on the 3rd day of September, 1914, whereby compensation was awarded to the above named William Alfred Walker in the total sum of \$11.54; and said appeal having been argued in the Court of Appeals by Norman B. Beecher, Esq., of counsel for the appellant, and E. C. Aiken, Deputy Attorney General, of counsel for the Workmen's Compensation Commission, and the Court of Appeals after due deliberation had thereon, did order

33 and adjudge that the order of the Appellate Division of the Supreme Court appealed from be affirmed with costs, and further ordered that the record and proceedings be remitted to the Appellate Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law, and the said remittitur having been filed in this Court,

Now, on motion of Egbert E. Woodbury, Attorney General, Attorney for the State Industrial Commission, formerly the Workmen's Compensation Commission, it is

Ordered, that the order and judgment of the Court of Appeals be and the same is hereby made the order of this Court, and that the award or decision of the Workmen's Compensation Commission entered on the 9th day of October, 1914, be and the same is hereby in all respects affirmed with \$90.50 costs to be paid by the appellant.

JOSEPH H. HOLLANDS, *Clerk*.

34 [Endorsed:] Supreme Court, Appellate Division, Third Department. In the Matter of the Claim of William Alfred Walker for Workmen's Compensation, vs. Clyde Steamship Company, Employer and Self-Insurer, Appellant. Copy. Order Affirming Order. Egbert E. Woodbury, Attorney-General, Attorney for —, Capitol, Albany, N. Y.

35 New York Court of Appeals.

CLYDE STEAMSHIP COMPANY, Plaintiff in Error,
against
WILLIAM ALFRED WALKER, Defendant in Error.

Application for Writ of Error.

To the Honorable Willard Bartlett, Chief Judge of the New York Court of Appeals:

The petition of Clyde Steamship Company respectfully shows:

On July 14, 1914, William Alfred Walker filed a claim with the New York State Workmen's Compensation Commission for compensation under the Workmen's Compensation law for injuries received on July 1, 1914, while in the employ of Clyde Steamship Company, a Maine corporation. Said Walker at the time of the injury was on board a vessel of the Clyde Steamship Company lying in the waters of the Hudson River, unloading lumber brought by said vessel from the State of North Carolina to the State of New York. The injury was accidental. Your petitioner's business in this State consists solely in carrying merchandise and passengers between New York and other states.

Your petitioner objected to the making of an award on various grounds set out in the record and set out in the assignments of error made in connection with this application for a writ of error. The Commission, however, on September 3, 1914, made an award of

- 36 compensation claiming to act under the Workmen's Compensation Law of the State of New York, L. 1913, ch. 816, as reenacted by L. 1914, ch. 41.

From said award your petitioner appealed to the Appellate Division of the Supreme Court, Third Judicial Department, and said Appellate Division affirmed said award. Thereupon your petitioner appealed from said order to the New York Court of Appeals, which is the highest court in the State of New York, and said Court of Appeals adjudged that said order of said Appellate Division *Division* should be affirmed, and it remitted the record with its said judgment to the said Appellate Division, which thereupon made said judgment of the Court of Appeals the judgment of said Appellate Division. Said record is now with said Appellate Division.

Inasmuch as certain errors appear in the judgment entered upon the remittitur of the Court of Appeals and in the proceedings had prior thereto, as recited in the annexed assignments of error, your petitioner prays for the allowance of a writ of error, returnable to the Supreme Court of the United States, and a citation.

And so it will ever pray, etc.

Dated, October 8, 1915.

CLYDE STEAMSHIP COMPANY,
By BURLINGHAM, MONTGOMERY &
BEECHER, *Its Attorneys*.

CHARLES C. BURLINGHAM, *Counsel*.

- 37 [Endorsed:] New York Court of Appeals. Clyde Steamship Company, Plaintiff-in-Error, vs. William Alfred Walker, Defendant-in-Error. Application for Writ of Error. Burlingham, Montgomery & Beecher, Attorneys for Pl'ff-in-Error, 27 William Street, Borough of Manhattan, New York City. Due service of within — is hereby admitted this 21st day of October, 1915. E. E. Woodbury, Att'y General. Jeremiah F. Connor, Attorney for State Workmen's Compensation Commission.

- 38 Supreme Court of the United States.

CLYDE STEAMSHIP COMPANY, Plaintiff in Error,
against
WILLIAM ALFRED WALKER, Defendant in Error.

Assignments of Error by Plaintiff in Error.

And now comes Clyde Steamship Company, plaintiff-in-error in the above entitled matter, and in connection with its application for a writ of error makes its assignments of error:

1. The Court erred in deciding that the Workmen's Compensation Law of New York, L. 1913, ch. 816, as reenacted by L. 1914, ch. 41, was not unconstitutional in that it takes plaintiff in error's property without due process of law in violation of the Fourteenth

Amendment of the Constitution of the United States, whereby was drawn in question the validity of a statute of or an authority exercised under the State of New York on the ground of their being repugnant to the Constitution or laws of the United States and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution of the United States and the decision was against the right, privilege or immunity especially set up or claimed under such Constitution.

2. The Court erred in deciding that the Workmen's Compensation Law, L. 1913, ch. 816, as reenacted by L. 1914, ch. 41, was not unconstitutional, in that it constitutes a regulation and a burden upon commerce among the several states in violation of

39 Article 1, Sec. 8, of the Constitution of the United States, whereby was drawn in question the validity of a statute of or an authority exercised under the State of New York, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the decision was against the right, privilege or immunity especially set up or claimed under such Constitution and statutes.

3. The Court erred in deciding that the Workmen's Compensation Law, L. 1913, ch. 816, as reenacted by L. 1914, ch. 41, was not unconstitutional, in that it denies the plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States because said law does not afford an exclusive remedy, but leaves the plaintiff-in-error and its vessels subject to suit in admiralty, whereby was drawn in question the validity of a statute of or an authority exercised under the State of New York on the ground of their being repugnant to the Constitution or laws of the United States and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the decision was against the right, privilege or immunity especially set up or claimed under such Constitution or statutes.

4. The Court erred in deciding that the Workmen's Compensation Law, L. 1913, ch. 816, as reenacted by L. 1914, ch. 41, was not unconstitutional in that it violates Article 3, Sec. 2, of the Constitution of the United States conferring admiralty jurisdiction upon the courts of the United States, whereby was drawn in question

40 the validity of a statute of or an authority exercised under the United States, and the decision was against their validity; and therein was drawn in question the validity of a statute of or an authority exercised under the State of New York, on the ground of their being repugnant to the Constitution or laws of the United States and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the de-

cision was against the right, privilege or immunity especially set up or claimed under such Constitution or statutes.

5. The Court erred in not rendering judgment in favor of the plaintiff in error, because said Workmen's Compensation Law, L. 1913, ch. 816, as reenacted by L. 1914, ch. 41, as applied to this plaintiff in error, is unconstitutional and void and in conflict with and in violation of Article 1, Sec. 8, Article 3, Sec. 2, and the Fourteenth Amendment of the Constitution of the United States, whereby was drawn in question the validity of a statute of or an authority exercised under the State of New York on the ground of their being repugnant to the Constitution or laws of the United States and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the decision was against the right, privilege or immunity especially set up or claimed under such Constitution or statutes.

Dated, New York, October 8, 1915.

CHARLES C. BURLINGHAM,
Attorney for Clyde Steamship Co.

41 [Endorsed:] Supreme Court of the United States. Clyde Steamship Company, Plaintiff-in-Error, vs. William Alfred Walker, Defendant-in-Error. Assignments of Error. Burlingham, Montgomery & Beecher, Attorneys for Pl'ff-in-Error, 27 William Street, Borough of Manhattan, New York City. Due service of within — is hereby admitted this 21st day of October, 1915. E. E. Woodbury, Att'y General. Jeremiah F. Connor, Attorney for State Workmen's Compensation Commission.

42 Supreme Court of the United States.

CLYDE STEAMSHIP COMPANY, Plaintiff in Error,
against
WILLIAM ALFRED WALKER, Defendant in Error.

Prayer for Reversal.

To the Honorable the Supreme Court of the United States:

Now comes the above named plaintiff-in-error, and in connection with its writ of error issued by this Court to the Appellate Division of the Supreme Court of the State of New York, Third Department, it prays for a reversal of the judgment against it of said Appellate Division affirming an award of the State Workmen's Compensation Commission, entered in the office of said Court, on March 2, 1915, and it also prays for a reversal of the judgment of affirmance entered in the office of said Court on September 14, 1915, upon the order or judgment of the Court of Appeals, and for a reversal of the judgment of the Court of Appeals affirming said judgment or orders.

CHARLES C. BURLINGHAM,
*Attorney for Clyde Steamship
Company, Plaintiff-in-Error.*

3 [Endorsed:] Supreme Court of the United States. Clyde Steamship Company, Plaintiff-in-Error vs. William Alfred Walker, Defendant-in-Error. Prayer for Reversal. Burlingham, Montgomery & Beecher, Attorneys for Plff-in-Error, 27 William Street, Borough of Manhattan, New York City. Due service of rithin — is hereby admitted this 21st day of October, 1915. E. L. Woodbury, Att'y General. Jeremiah F. Connor, Attorney for State Workmen's Compensation Commission.

4 UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Appellate Division, Third Department, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court, Appellate Division, on a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which decision could be had in the said suit between William Alfred Walker, plaintiff, and Clyde Steamship Company, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed under such clause of the said Constitution, statute, treaty or commission; a manifest error had happened to the great damage of the said defendant, as is said and appears by its complaint. We being willing that error, if any hath been, should be

45 duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 16 day of October, in the year of our Lord One thousand nine hundred and fifteen.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk of the United States District Court,
Southern District of New York.

The above writ is allowed by
WILLARD BARTLETT,
Chief Judge of the New York Court of Appeals.

46 [Endorsed:] Supreme Court of the United States. Clyde Steamship Company, Plaintiff-in-Error vs. William Alfred Walker, Defendant-in-Error. Writ of Error. Burlingham, Montgomery & Beecher, Attorneys for Plff-in-Error, 27 William Street, Borough of Manhattan, New York City. Due service of within — is hereby admitted this 21st day of October, 1915. E. E. Woodbury, Att'y General. Jeremiah F. Connor, Attorney for State Workmen's Compensation Commission.

47 UNITED STATES OF AMERICA:

To William Alfred Walker and the State Industrial Commission,
 Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of New York, Appellate Division, Third Department, wherein Clyde Steamship Company is plaintiff-in-error, and you are defendant-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, Hon. Willard Bartlett, Chief Judge of the New York Court of Appeals, this 16 day of October, in the year of Our Lord One thousand nine hundred and fifteen.

[Seal State of New York Court of Appeals.]

WILLARD BARTLETT,
Chief Judge of the New York Court of Appeals.

48 [Endorsed:] Supreme Court of the United States. Clyde Steamship Company, Plaintiff-in-Error vs. William Alfred Walker, Defendant-in-Error. Citation. Burlingham, Montgomery & Beecher, Attorneys for Plff-in-Error, 27 William Street, Borough of Manhattan, New York City. Due service of within — is hereby admitted this 21st day of October, 1915. E. E. Woodbury, Att'y General. Jeremiah F. Connor, Attorney for State Workmen's Compensation Commission.

49 Court of Appeals of the State of New York.

CLYDE STEAMSHIP COMPANY, Plaintiff in Error,
 against
 WILLIAM ALFRED WALKER, Defendant in Error.

Know all men by these presents, That the National Surety Company, a Corporation organized and existing under the laws of the

State of New York, having an office and principal place of business at No. 115 Broadway, in the Borough of Manhattan, City of New York, is held and firmly bound unto the above named William Alfred Walker, in the sum of Five Hundred (\$500.00) Dollars to be paid to the said William Alfred Walker, his heirs, administrators or assigns, to which payment well and truly to be made the said National Surety Company binds itself, its successors and assigns firmly by these presents.

Signed and sealed with the Corporate seal this 5th day of October, 1915.

Whereas, the above named Clyde Steamship Company has prosecuted a Writ of Error to the United States Supreme Court to reverse a certain judgment rendered in the above entitled action by the Court of Appeals of the State of New York and entered in the Appellate Division of the Supreme Court of said State, Third Department.

Now, Therefore, the condition of the above obligation is such that if the said Clyde Steamship Company shall prosecute its writ of error to effect, and answer all costs if it fail to make its said plea good, then the above obligation to be void, else to remain in full force and virtue.

NATIONAL SURETY COMPANY,
By WM. A. THOMPSON, *Resident Vice President.*

Attest:

E. M. McCARTHY,
Resident Assistant Secretary.

50 STATE OF NEW YORK,
County of New York, ss:

On this 5th day of October, 1915, before me personally appeared Wm. A. Thompson, Resident Vice-President of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the County of New York; that he is the Resident Vice-President of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by the order of the Board of Directors of said Company, and that he signed said instrument as Resident Vice-President of said Company by like authority, and that the liabilities of said Company do not exceed its assets as determined by an audit of the Company's annual statement filed with the Superintendent of Insurance of the State of New York and certified to by said Superintendent, pursuant to section 2 of chapter 182 of the Laws of the State of New York for the year 1913, amending section 182 of chapter 33 of the Laws of the State of New York for the year 1909, constituting chapter 28 of the Consolidated Laws of the State of New York. And said Wm. A. Thompson further said that he is acquainted with E. M. McCarthy and knows him to be the Resident Assistant Secre-

tary of said Company; that the signature of the said E. M. McCarthy subscribed to the said instrument is in the genuine handwriting of the said E. M. McCarthy and was thereto subscribed by the like order of the said Board of Directors and in the presence of him, the said Resident Vice-President.

H. E. EMMETT,
Notary Public, &c.

Copy of By-Law.

Be it remembered: That at a regular meeting of the Board of Directors of the National Surety Company, duly called and held on the sixth day of February, 1912, a quorum being present, the following By-Law was adopted:

Article XIII.

Section 1. Signatures required.—All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof, shall be signed by the President, a Vice-President, a Resident Vice-President, or Attorney-in-Fact, and shall have the seal of the Company affixed thereto, duly attested by the Secretary, an Assistant Secretary, or Resident Assistant Secretary. All Vice-Presidents and Resident Vice-Presidents shall each have authority to sign such instruments, whether the President be absent or incapacitated, or not, and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated, or not; and the Attorneys-in-Fact shall each have authority, in the discretion of such Attorneys-in-Fact, to affix to such instruments an impression of the Company's seal, whether the Secretary be absent or incapacitated, or not, or to attach the individual seal of the Attorney-in-Fact thereto, or to use the scroll of the Attorney-in-Fact, or a wafer, wax, or other similar adhesive substance affixed thereto, or a seal of paper or other similar substance affixed thereto by mucilage, or other adhesive substance, or use the word "Seal" or the letters "L. S." opposite the signature of such Attorneys-in-Fact, as the case may be.

COUNTY OF NEW YORK,
State of New York, ss:

I, E. M. McCarthy, Resident Assistant Secretary of the National Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and the whole of said original By-Law.

Given under my hand and the seal of the Company, in the County of New York, this 5th day of October, 1915.

E. M. MCCARTHY,
Resident Assistant Secretary.

51 STATE OF NEW YORK,
 County of Albany, ss:

I, Joseph H. Hollands, Clerk of the Supreme Court of the State of New York, Appellate Division, Third Department, pursuant to a writ of error directed to the Honorable the Judges of the said Appellate Division, Third Department, which said writ was allowed by the Honorable Willard Bartlett, Chief Judge of the New York Court of Appeals, and signed by the Clerk of the United States District Court for the Southern District of New York on October 1915, do hereby certify the writing hereto annexed to be a true, complete and perfect copy of the record of assignments of error and of all proceedings in the case of William Alfred Walker, claimant-respondent, against Clyde Steamship Company, defendant-appellant, as fully as the same remain on file and of record in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of the said Court, this 26th day of October, 1915.

[Seal Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS, *Clerk.*

52 [Endorsed:] Supreme Court of the United States.
 Clyde Steamship Company, Plaintiff-in-Error, vs. William Alfred Walker, Defendant-in-Error. Clerk's Return. Burlingham, Montgomery & Beecher, Attorneys for Pl'ff-in-Error, 27 William Street, Borough of Manhattan, New York City. Due service of within —, is hereby admitted, this — day of —, 191—. — —, Attorney for —.

Endorsed on cover: File No. 24,984. New York Supreme Court, Appellate Division, Third Department. Term No. 701. Clyde Steamship Company, plaintiff in error, vs. William Alfred Walker. Filed November 9th, 1915. File No. 24,984.



Wm. Lawton, Secy. U. S.
F. L. H. D.
JAN 31 1917
JAMES B. HANES
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1916

No. 281

CLYDE STEAMSHIP COMPANY

Plaintiff-in-Error

AGAINST

WILLIAM ALFRED WALKER

Defendant-in-Error

**IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION
THIRD DEPARTMENT, OF THE STATE OF NEW YORK**

BRIEF OF PLAINTIFF-IN-ERROR ON REARGUMENT

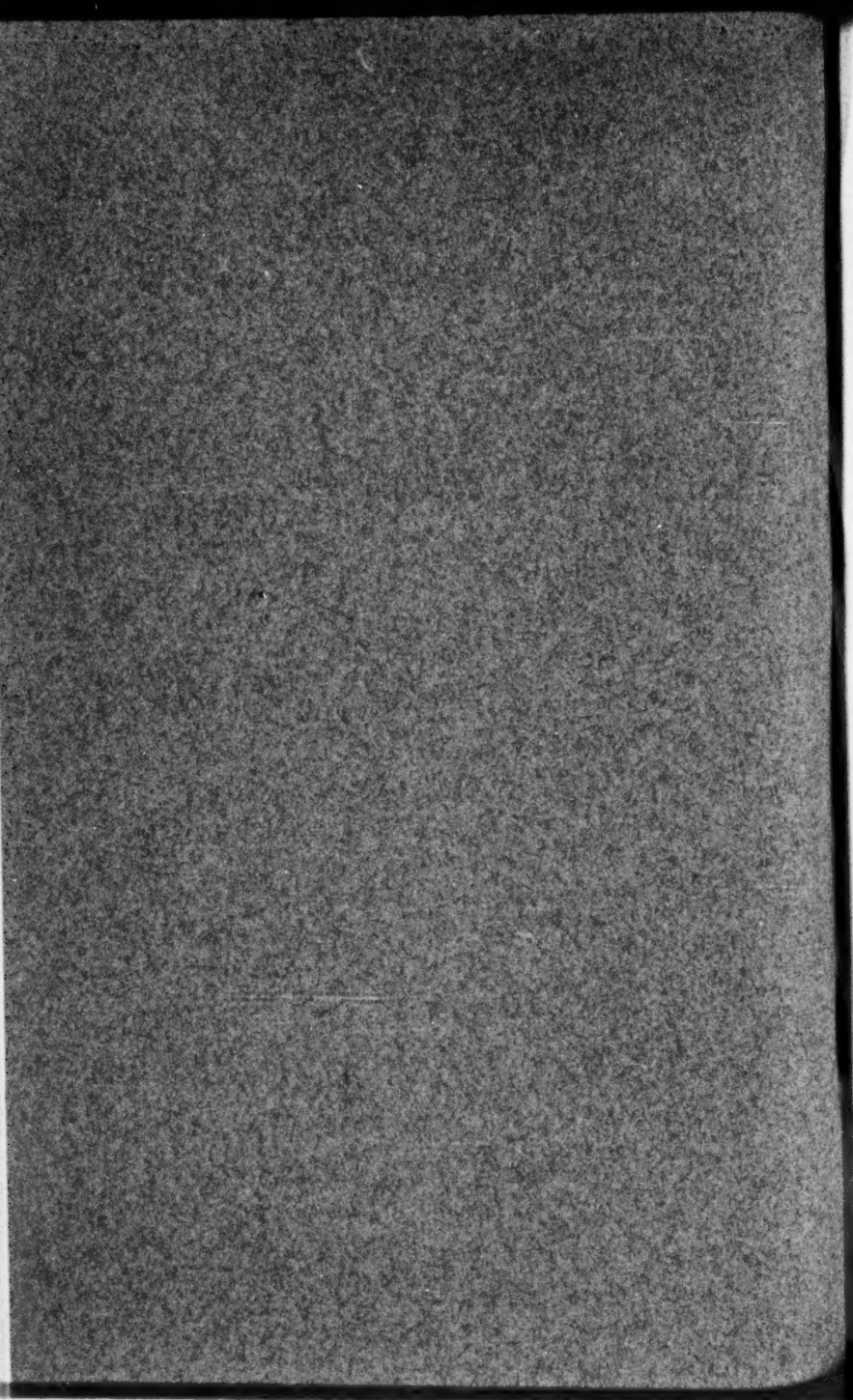
BURLINGHAM, MONTGOMERY & BEECHER

Attorneys for Plaintiff-in-Error

NORMAN B. BEECHER

RAY BOOD ALLEN

Of Counsel



CONTENTS

	PAGE
Statement of the case.....	1
Specification of errors.....	3
Argument	4
I. The New York Workmen's Compensation Law deprives the plaintiff-in-error of prop- erty without due process of law, in vio- lation of the Fourteenth Amendment of the Constitution of the United States.....	4
II. The New York Workmen's Compensation Law imposes a direct and unconstitutional burden upon the interstate commerce trans- acted by the plaintiff-in-error.....	4
III. The New York Workmen's Compensation Law denies this plaintiff-in-error the equal protection of the laws because, although it complies with the Compensation Law, it is not freed from further liability to workmen injured on shipboard, but remains liable to suits in Admiralty.....	5
IV. The New York Workmen's Compensation Law as applied to this case infringes upon the exclusive admiralty jurisdiction of the United States.....	5
Conclusion	5



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916

No. 281

CLYDE STEAMSHIP COMPANY
Plaintiff-in-Error,

AGAINST

WILLIAM ALFRED WALKER,
Defendant-in-Error.

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION,
THIRD DEPARTMENT, OF THE STATE OF NEW YORK

BRIEF OF PLAINTIFF-IN-ERROR ON REARGUMENT

STATEMENT OF THE CASE

This cause involves the constitutionality of the Workmen's Compensation Law of the State of New York. The case involves the questions presented in the first four points in the case of *Southern Pacific Company, plaintiff-in-error v. Marie Jensen, defendant-in-error*, 280, re-argued herewith.

The defendant-in-error began this proceeding by filing his claim for compensation with the State Workmen's

Compensation Commission. The Commission held a hearing and made its findings of fact, which are on pages 9 and 10 of the Record.

The findings show that Walker was injured on July 1, 1914, while working in the employ of the Clyde Steamship Company on its vessel *Cherokee*. The claimant was hooking the rope of a derrick into a load of lumber in the 'tween decks of the vessel when his hand was jammed against the lumber. This resulted in a laceration of the second finger of the left hand, disabling Walker for three weeks.

The Clyde Steamship Company is a Maine corporation.

The cargo which was being unloaded at the time of the accident had been brought from North Carolina. The business of the Clyde Steamship Company in New York consists solely of carrying passengers and merchandise to and from other states.

At the hearing before the Commission, the plaintiff-in-error urged that the New York Compensation Law did not apply to this claim (p. 10) because

1. The accident took place on board a vessel owned by a foreign corporation, and when both workmen and employer were engaged solely in interstate commerce;

2. The injury was one with respect to which Congress may and has established a rule of liability, and under section 114, the New York Compensation Law had no application;

3. Walker was injured in the operation of a vessel of another State engaged in interstate commerce, while the law, by its terms, applies only to those engaged in the operation of a New York vessel (Sec. 2, Group 8).

The plaintiff-in-error also urged that the law as applied to this injury was contrary to the Constitution of the United States, because

1. It takes property without due process of law;
2. It constitutes a regulation of commerce among the several States;
3. It denies this plaintiff-in-error the equal protection of the laws, because it does not afford an exclusive remedy to this employer, but leaves him subject to suits in admiralty.
4. It violates Article 3, Section 2 of the Constitution of the United States conferring admiralty jurisdiction upon the courts of the United States.

The Commission overruled all the objections and made an award of compensation. From this award the employer appealed to the Appellate Division of the Supreme Court, Third Department, where the award was confirmed, without opinion (pp. 11, 12). An appeal was then taken to the Court of Appeals, where the order of the Appellate Division was affirmed. The record was remitted to the Appellate Division of the Supreme Court, Third Department, and thereupon this writ of error was sued out.

The opinion of the Court of Appeals, written by Judge Miller, begins on page 16 of the record, and is reported in 215 N. Y. 529.

SPECIFICATION OF ERRORS

Plaintiff-in-error contends that the Court of Appeals erred in not deciding that

1. The New York Workmen's Compensation Law is contrary to the Constitution of the United States in that

it takes plaintiff-in-error's property without due process of law;

2. The New York Workmen's Compensation Law is unconstitutional in that it constitutes a regulation of and burden upon interstate commerce;

3. The Workmen's Compensation Law is unconstitutional in that it denies this plaintiff-in-error the equal protection of the laws, because it does not give to employers of men working on shipboard the freedom from further liability for injuries to workmen that is accorded to other employers.

4. The Workmen's Compensation Law is unconstitutional in that it violates Article 3, Section 2 of the Constitution of the United States conferring admiralty jurisdiction upon the courts of the United States.

(Assignments of Error, pp. 20, 21.)

FIRST POINT

THE NEW YORK WORKMEN'S COMPENSATION LAW DEPRIVES THE PLAINTIFF-IN-ERROR OF PROPERTY WITHOUT DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

This point is covered by Point I in the *Jensen* case, reargued herewith.

SECOND POINT

THE NEW YORK WORKMEN'S COMPENSATION LAW IMPOSES A DIRECT AND UNCONSTITUTIONAL BURDEN UPON THE INTERSTATE COMMERCE TRANSACTED BY THE PLAINTIFF-IN-ERROR.

This point is covered by Point II in the *Jensen* case, reargued herewith.

THIRD POINT

THE NEW YORK WORKMEN'S COMPENSATION LAW DENIES THIS PLAINTIFF-IN-ERROR THE EQUAL PROTECTION OF THE LAWS BECAUSE, ALTHOUGH IT COMPLIES WITH THE COMPENSATION LAW, IT IS NOT FREED FROM FURTHER LIABILITY TO WORKMEN INJURED ON SHIPBOARD, BUT REMAINS LIABLE TO SUITS IN ADMIRALTY.

This point is covered by Point III in the *Jensen* case, reargued herewith.

FOURTH POINT

THE NEW YORK WORKMEN'S COMPENSATION LAW AS APPLIED TO THIS CASE INFRINGES UPON THE EXCLUSIVE ADMIRALTY JURISDICTION OF THE UNITED STATES.

This point is covered by Point IV in the *Jensen* case reargued herewith.

LAST POINT

THE JUDGMENT SHOULD BE REVERSED WITH COSTS.

BURLINGHAM, MONTGOMERY & BEECHER,
Attorneys for Plaintiff-in-Error,
27 William Street,
New York City.

NORMAN B. BEECHER,
RAY ROOD ALLEN,
Of Counsel.



FILED

FEB 24 1916

JAMES D. MAHER
ERK

Supreme Court of the United States

OCTOBER TERM, 1915.

No.

281

CLYDE STEAMSHIP COMPANY,

Plaintiff-in-Error,

against

WILLIAM ALFRED WALKER,

Defendant-in-Error.

In Error to the Supreme Court, Appellate Division,
Third Department, of the State of New York.

BRIEF OF PLAINTIFF-IN-ERROR

BURLINGHAM, MONTGOMERY & BEECHER,

Attorneys for Plaintiff-in-Error.

NORMAN B. BEECHER,

RAY ROOD ALLEN,

Of Counsel.



CONTENTS.

	PAGE
Statement of the case.....	1
Specification of errors.....	3
Argument	4
I. The New York Workmen's Compensation Law deprives the plaintiff-in-error of property without due process of law, in violation of the Fourteenth Amendment of the Constitu- tion of the United States.....	4
II. The New York Workmen's Compensation Law denies this plaintiff-in-error the equal pro- tection of the laws because, although it com- plies with the Compensation Law, it is not freed from further liability to workmen in- jured on shipboard, but remains liable to suits in Admiralty.....	4
III. The New York Workmen's Compensation Law imposes a direct and unconstitutional burden upon the interstate commerce trans- acted by the plaintiff-in-error.....	4
Conclusion	5



Supreme Court of the United States,

OCTOBER TERM, 1915.

No. 701.

CLYDE STEAMSHIP COMPANY,
Plaintiff-in-Error,

against

WILLIAM ALFRED WALKER,
Defendant in Error.

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION,
THIRD DEPARTMENT, OF THE STATE OF NEW YORK.

BRIEF OF PLAINTIFF-IN-ERROR.

Statement of the Case.

This cause involves the constitutionality of the Workmen's Compensation Law of the State of New York. The case involves the questions presented in the first three points in the case of *Southern Pacific Company, plaintiff-in-error, v. Marie Jensen, defendant-in-error*, No. 700, argued herewith.

The defendant-in-error began this proceeding by filing his claim for compensation with the State Workmen's Compensation Commission. The Commission held a hearing and made its findings of fact, which are on pages 9 and 10 of the Record.

The findings show that Walker was injured on July 1, 1914, while working in the employ of the Clyde Steamship Company on its vessel *Cherokee*. The claimant was hooking the rope of a derrick into a load of lumber in the 'tween decks of the vessel when his hand was jammed against the lumber. This resulted in a laceration of the second finger of the left hand, disabling Walker for three weeks.

The Clyde Steamship Company is a Maine corporation.

The cargo which was being unloaded at the time of the accident had been brought from North Carolina. The business of the Clyde Steamship Company in New York consists solely of carrying passengers and merchandise to and from other states.

At the hearing before the Commission, the plaintiff-in-error urged that the New York Compensation Law did not apply to this claim (p. 10) because

1. The accident took place on board a vessel owned by a foreign corporation, and when both workman and employer were engaged solely in interstate commerce;

2. The injury was one with respect to which Congress may and has established a rule of liability, and under section 114, the New York Compensation Law had no application;

3. Walker was injured in the operation of a vessel of another State engaged in interstate commerce, while the law, by its terms, applies only to those engaged in the operation of a New York vessel (Sec. 2, Group 8).

The plaintiff-in-error also urged that the law as applied to this injury was contrary to the Constitution of the United States, because

1. It takes property without due process of law;

2. It constitutes a regulation of commerce among the several States;

3. It denies this plaintiff-in-error the equal protection of the laws, because it does not afford an exclusive remedy to this employer, but leaves him subject to suits in admiralty.

The Commission overruled all the objections and made an award of compensation. From this award the employer appealed to the Appellate Division of the Supreme Court, Third Department, where the award was confirmed, without opinion (pp. 11, 12). An appeal was then taken to the Court of Appeals, where the order of the Appellate Division was affirmed. The record was remitted to the Appellate Division of the Supreme Court, Third Department, and thereupon this writ of error was sued out.

The opinion of the Court of Appeals, written by Judge Miller, begins on page 16 of the record, and is reported in 215 N. Y. 529.

Specification of Errors.

Plaintiff-in-error contends that the Court of Appeals erred in not deciding that

1. The New York Workmen's Compensation Law is contrary to the Constitution of the United States in that it takes plaintiff-in-error's property without due process of law;

2. The New York Workmen's Compensation Law is unconstitutional in that it constitutes a regulation of and burden upon interstate commerce;

3. The Workmen's Compensation Law is unconstitutional in that it denies this plaintiff-in-error the equal protection of the laws, because it does not give to employers of men working on shipboard the freedom from further liability for injuries to workmen that is accorded to other employers.

(Assignments of Error, pp. 20, 21.)

FIRST POINT.

The New York Workmen's Compensation Law deprives the plaintiff-in-error of property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

This point is covered by Point I in the *Jensen* case, argued herewith.

SECOND POINT.

The New York Workmen's Compensation Law denies this plaintiff-in-error the equal protection of the laws because, although it complies with the Compensation Law, it is not freed from further liability to workmen injured on shipboard, but remains liable to suits in Admiralty.

This point is covered by Point II in the *Jensen* case, argued herewith.

THIRD POINT.

The New York Workmen's Compensation Law imposes a direct and unconstitutional burden upon the interstate commerce transacted by the plaintiff-in-error.

This point is covered by Point III in the *Jensen* case, argued herewith.

LAST POINT.

The judgment should be reversed with costs.

BURLINGHAM, MONTGOMERY & BEECHER

Attorneys for Plaintiff in-Error,

27 William Street,

New York City.

NORMAN B. BEECHER,

RAY ROOD ALLEN,

Of Counsel.



Office Supreme Court, U. S.

FILED

FEB 21 1916

JAMES D. MAHER

CLERK

IN THE

Supreme Court of the United States

CLYDE STEAMSHIP COMPANY,
Plaintiff in error,

vs.

WILLIAM ALFRED WALKER.

October Term,

1915.

No. 201

281

In error to the Supreme Court, Appellate Division, Third Judicial
Department of the State of New York

Brief of the New York State Industrial Commission

EGBURT E. WOODBURY,
Attorney-General of the State of New York

E. CLARENCE AIKEN,
HAROLD J. HINMAN,
Of Counsel



Supreme Court of the United States

CLYDE STEAMSHIP COMPANY,
Plaintiff-in-Error,
against

WILLIAM ALFRED WALKER.

} October Term, 1915.

**IN ERROR TO THE SUPREME COURT,
APPELLATE DIVISION, THIRD JUDICIAL
DEPARTMENT, OF THE STATE OF NEW
YORK.**

**Brief of the New York State Industrial Com-
mission.**

STATEMENT OF THE CASE.

This is a writ of error to review a judgment of the Court of Appeals of the State of New York, which affirmed an order of the Appellate Division of the Supreme Court, which in turn affirmed an award of the Workmen's Compensation Commission of New York which awarded compensation to William Alfred Walker in sum of \$11.54 (p. 10). Walker was employed in the city of New York by the Clyde Steamship Company for longshore work and had been employed by said company from time to time during the year prior to the accident. Claimant was on board the steamship Cherokee, owned and operated by the Clyde Steamship Company. The Cherokee was moored to and alongside pier 37, North river. While Walker was

hooking the rope of the derrick into a load of lumber in between decks of said vessel for the purpose of unloading it from said vessel, his hand was jammed against the lumber, resulting in laceration of the second finger of the left hand. Claimant was disabled by reason of the injury from July 1, 1914, to July 22, 1914, returning to work upon the latter date. Under the Workmen's Compensation Law the employee is not allowed for the first two weeks during which he is disabled. Walker was therefore only allowed for two-thirds of his weekly wage for one week, making a total award of \$11.54 (pp. 9-10).

A general statement in argument upon the constitutionality of the New York Workmen's Compensation Law has been made in the case of Southern Pacific Company, plaintiff-in-error, against Marie Jensen, argued herewith. The only additional argument therefore that will be made will be upon the point raised by the plaintiff in error that jurisdiction of said matter lies in admiralty and that the plaintiff-in-error is denied the equal protection of the law.

ARGUMENT

The Workmen's Compensation Law is not in conflict with any legislation of Congress over interstate commerce, for none has been enacted, nor is it in conflict with the jurisdiction of the admiralty courts, for Congress has not yet made the jurisdiction of admiralty over torts on navigable waters exclusive of all action by the States.

Congress may act upon the subject of injuries received on board a vessel engaged in the interstate or foreign commerce, under either of two

powers granted by the Federal Constitution, namely, under the power to Congress "to regulate commerce with foreign nations and among the several states" (article I, sec. 8, par. 3), or under the power set out in article III, section 2, par. 1, extending the judicial power "to all cases of admiralty and maritime jurisdiction." The latter power, although running to the judiciary, assumes the existence in the commerce clause or elsewhere of a corresponding legislative power over maritime affairs resting in the Federal Congress.

The Lottawanna, 21 Wall. 558.

Butler v. Boston Steamship Co., 130 U. S. 527.

In re Garnett, 141 U. S. 1.

What the states may do with interstate commerce on navigable waters under plenary power until Congress takes over the exclusive jurisdiction is well epitomized by Mr. Justice Hughes in the *Minnesota Rate Cases*, 230 U. S. 352, where he follows the cases at page 403 through State regulations of pilotage, harbor, bay and river improvements, bridges, wharfage charges and vessel quarantine, all of which are within State regulation. It also appears in earlier cases which he does not review that States have, with the permission of Congress, exclusive jurisdiction over crimes committed on navigable waters within their boundaries. (*United States v. Beavans*, 3 Wheat. 336; *People v. Welch*, 141 N. Y. 266); that the States have complete power to protect fisheries (*Manchester v. Massachusetts*, 139 U. S. 240), oyster beds (*McCready v. Virginia*, 94 U. S. 391), and sponges (*The Abbey Dodge*, 223 U. S.

166) in public waters of the United States. And since the decision in the *Minnesota Rate Cases* the Supreme Court has sustained the power of a State to compel a railroad doing business as an interstate carrier by land and by water to pay its employees semi-monthly (*Erie Railroad Company v. Williams*, 233 U. S. 685).

Congress has not, therefore, by legislation deprived the States of jurisdiction to pass compensation laws affecting employees on vessels engaged in interstate commerce, unless, as urged, Congress has done so in section 24 of the Judicial Code (36 Stat. 1091), which provides:

“ The district courts shall have original jurisdiction as follows:

“ Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it.”

And by section 256 of the Judicial Code:

“ The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several states:

“ Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it.”

The above sections were compiled from the Judiciary Act of 1789, chapter 20, section 9 (1 Stat. 76), where the wording was as follows:

“ And shall also have exclusive original cognizance of all civil causes of admiralty and

maritime jurisdiction, including all seizures under laws of impost navigation or trade of the United States where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen within their respective districts as well as upon the high seas; (a) saving to suitors in all cases, the right of a common law remedy where the common law is competent to give it."

It appears from the history of admiralty law that its principles were inherited from the civil law. The idea of proceeding *in rem* to foreclose a lien upon a vessel for injuries received on board upon navigable waters rested, exclusively with the admiralty courts applying the civil law. This jurisdiction *in rem* the Federal courts of this country have preserved intact, allowing the states whenever they chose to pursue in common law an action *in personam* against the owners. This is what is meant by saving the right of a common law remedy where the common law and not the admiralty law is competent to give it — that is when the proceeding is not *in rem*.

Three or four of the early cases in the United States Supreme Court which still remain controlling, clarify the construction of the phrase "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it." They go to this extent of maintaining that there is no concurrent jurisdiction *in rem* in the State courts against the vessel. A proceeding *in rem* is a civil, not a common law proceeding, and such a civil law proceeding was retained to the exclusive jurisdiction of courts of admiralty.

In the case of *The Moses Taylor*, 4 Wall. 411,

a statute of California gave a lien against a vessel for supplies and materials furnished for breach of contract and for other claims, and a proceeding against the vessel to enforce the lien. The Supreme Court of the United States held that a contract for the transportation of passengers on the high seas was a maritime contract; and that in so far as the statute authorized a proceeding *in rem* in the State court against the vessel for breach of such a contract, the statute was unconstitutional as interfering with the exclusive admiralty jurisdiction of the United States courts. Mr. Justice Field, said, speaking of the saving clause in the ninth section of the Judiciary Act of 1789:

“That clause only saves to suitors ‘the right of a common-law remedy, where the common law is competent to give it.’ It is not a remedy in the common law courts which is saved, but a common law remedy. A proceeding *in rem*, as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common law courts, it is given by statute.”

In *Steamship Company v. Chase*, 16 Wall. 552, at page 533, Mr. Justice Clifford says:

“Where the suit is *in rem* against the thing, the original jurisdiction is exclusive in the District Courts, as provided in the ninth section of the Judiciary Act; but when the suit is *in personam* against the owner, the party seeking redress may proceed by libel in the District Court, or he may, at his election, proceed in an action at law; either in the Circuit Court if he and the defendant are citizens of different States, or in a State court as in other cases of actions cognizable in the

State and Federal Courts exercising jurisdiction in common law cases, as provided in the eleventh section of the Judiciary Act. He may have an action at law, in the case supposed, either in the Circuit Court or in a State court, because the common law in such a case is competent to give him a remedy, and wherever the common law in such a case is competent to give a party a remedy, the right to such a remedy is reserved and secured to suitors by the saving clause contained in the ninth section of the Judiciary Act."

Mr. Dana in an article "History of Admiralty Jurisdiction," 5 Am. Law Review, 581, at page 618, well states the decisions.

"State courts or circuit courts of the United States may take cognizance of all maritime contracts and torts, if the relief sought is one which common law or chancery can give; but if the relief sought is peculiar to courts of admiralty, only the district courts of the United States can administer it. The state courts of common law have jurisdiction over all maritime contracts or torts, if a remedy in damages is sought against persons. This jurisdiction is concurrent with the district courts in admiralty. The state courts of chancery have jurisdiction over such contracts if relief in equity is sought. The circuit courts of the United States have like jurisdiction, both at common law and in chancery in cases of aliens and non-residents; and the respective state courts have always, and the circuit courts may have, jurisdiction to administer statutory remedies against vessels in cases of maritime contracts and services, if those remedies are not admiralty remedies."

In the *Lottawanna*, 21 Wall. 558, at page 580, the court denies the right of a State to alter the

limits of admiralty jurisdiction and denies the possession of any power to confer such admiralty jurisdiction upon State courts

“ so as to enable them to proceed *in rem* for the enforcement of liens created by such state laws, for it is exclusively conferred upon the district courts of the United States. They can only authorize the enforcement thereof by common law remedies, or such remedies as are equivalent thereto.”

“ The true distinction ” as stated in *Knapp v. McCaffrey*, 177 U. S. 638-648, sustaining a state action in equity to foreclose a common law lien for towage services,

“ between such as are and such as are not invasions of the exclusive admiralty jurisdictions is this:

“ If the cause of action be one cognizable in admiralty, and the suit be *in rem* against the thing itself, though a monition be also issued to the owner, the proceeding is essentially one in admiralty. If, upon the other hand, the cause of action be not one of which a court of admiralty has jurisdiction, or if the suit be *in personam* against an individual defendant, with an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law, and within the saving clause of the statute (sec. 563) of a common law remedy. The suit in this case being one in equity to enforce a common law remedy, the state courts were correct in assuming jurisdiction.”

If a state proceeds *in personam* even if the vessel is attached, the remedy is one at common law.

Phillips v. Eggert, 133 Wis. 318, 113 N. W. 686, 178 Ill. 107.

Rounds v. Cloverport Foundry Co., 237 U. S. 303.

In *Johnson v. Westerfield*, 143 Ky. 10, construing a statute of that state giving an action for injuries occasioned by collision on navigable waters, it was said that the clause in the Judiciary Act of 1789 "saving to suitors a common law remedy where the common law is competent to give it" was intended to save the remedy or right of action in those courts which proceed according to the course of the common law as distinguished from admiralty proceedings, and that the words "common law remedy" do not necessarily imply an action or remedy obtainable in a common law court, but are equivalent to "the means employed to enforce a right or redress an injury" only they are limited to such causes of action as were known to the common law at the time of the passage of the Judiciary Act.

So in *Walter v. Kierstead*, 74 Ga. 18, a state statute allowing a proceeding by attachment for injury done to a vessel upon navigable waters, held that the act of Congress of 1789 saving the common law remedy to state courts did not exclude a proceeding of the nature under consideration.

"On the contrary it merely meant to give concurrent jurisdiction to the common law courts in cases where they had power to enforce such rights as the admiralty courts could enforce

whether the right or remedy so conferred by the common law or by statute."

The Georgia decision relies upon the authority of *Dougan v. The Champlain Transportation Company*, 56 N. Y. 1, where it was held that the phrase "saving to suitors in all cases a common law remedy where the common law is competent to give it" was wholly irrespective of the foundation of a right of action, that it was the remedy not the right which was preserved.

"The argument against the jurisdiction of the State courts is, that inasmuch as the common law gave no right of action to the personal representatives for the recovery of damages for the pecuniary injury of the next of kin, caused by the death against those whose wrongful act caused it, there was no civil common law remedy for such an injury. This is true. Until a right exists there can be no remedy. But when a right is given, whether by the common law or statute, there must be some remedy when it is withheld. The right of the next of kin to compensation for the pecuniary injury, is given by statute, and to enforce it a common law action is given to the personal representatives. It is this common law remedy that is saved in the acts above referred to. This is saved wholly irrespective of the foundation of the right to be enforced, whether upon the common law or statute. The intention of the statute was to confer exclusive admiralty and maritime jurisdiction upon the District Courts, at the same time leaving to the suitor his option of seeking redress at common law when it could be so obtained. This appears from the saving of common law remedies instead of common law rights. The former are preserved to the suitor in all cases, when competent, irrespective of the foundation of the latter, whether upon the common law or statutes."

It cannot be supposed that Congress always meant to limit the state to old common law actions and methods of procedure. It was simply distinguishing between civil and common law remedies.

It is, of course, impossible for the states to defeat by statutes or court decisions the admiralty jurisdiction of the Federal courts (*Workmen v. New York City*, 179 U. S. 552), but no attempt is made to do so by the Workmen's Compensation Law. The injured employee may choose his remedy either in the Federal court in admiralty or under the State Workmen's Act.

As the Employer's Liability cases in the Supreme Court have pointed out, the state may establish a rule of liability for interstate carriers by railroad until Congress acts. So the states may establish a rule of compensation until Congress acts and such rule will not interfere with the admiralty jurisdiction. The States are not, as we have shown, held down to the old methods of common law in existence in 1789 when the Judiciary Act was passed. In this particular we should perhaps refer to the case of *Steamboat Company v. Chase*, 16 Wall. 522, where Rhode Island had modified the common law by giving an action to personal representatives for death occurring through negligence. The steamship in Narragansett bay ran down and killed the deceased who was in a sailboat. Admiralty could have enforced the state law (*The Hamilton*, 207 U. S. 398), yet the Supreme Court left the state of Rhode Island to enforce its own new statutory modification of the common law in its own courts although admiralty had jurisdiction.

California and Massachusetts have applied their compensation law without question to stevedores and longshoremen.

Gillen v. Canada, Etc., Steamship Co.,
102 N. E. 346.

*Denker v. Pacific Stevedoring & Bal-
lasting Co.*, Report of Decisions,
California Industrial Accident Com-
mission, March 20, 1914, Vol. 1,
Case No. 9.

Respectfully submitted,

EGBURT E. WOODBURY,

Attorney-General of the State of New York.

E. CLARENCE AIKEN,

HAROLD J. HINMAN,

Of Counsel.

